

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC APPEAL CASE NO. E025 OF 2025

EDWARD

KARRAO

LESIRA.....APPELLANT

VERSUS

MBARIRA MOPEL.....1ST RESPONDENT

BRYAN MPOKE MOPEL.....2ND

RESPONDENT

*(Being an appeal arising from the Judgement of Honourable Vicky Kachuodho delivered on
17th May 2024 in Kajiado MCELC E028 of 2023)*

JUDGEMENT

Introduction and Background

1. Before this Court for determination is an appeal arising from the Judgment of the **Honourable Vicky Kachuodho**, delivered on the **17th of May 2024** in the Chief Magistrate's Court at Kajiado in **MCELC E028 of 2023**.
2. In the primary suit, the Plaintiff, **Edward Karrao Lesira**, (now Appellant) sought a declaration that he is the rightful owner of 20 acres of the suit land and an order for the 1st and 2nd Respondents to effect the transfer of the said land, which was hived off from **Land Parcel No. 1311 Mashuuru/Maroro Group Ranch**.
3. The Plaintiff's case was grounded on a sale agreement dated **31st March 2013** entered into with the late **Sasire Ene Mopel Kutata**, a widow of the deceased registered owner, **Oloibor Lukunya Mopel**. Conversely, the Respondents, **Mbarira Mopel** and **Bryan**

Mpoke Mopel, contended that the land was family property subject to succession proceedings that had not been finalized, and that their mother lacked the legal capacity to dispose of the property.

4. considering the evidence, the trial court determined that the sale agreement constituted intermeddling under **Section 45 of the Law of Succession Act** because it was executed before the widow had obtained a confirmed grant of letters of administration. Consequently, the Learned Magistrate found that the Plaintiff had failed to prove his case on a balance of probabilities and dismissed the suit on **17th May 2024**.
5. The Plaintiff, being aggrieved and dissatisfied by the said Judgment, filed a **Memorandum of Appeal** on **8th May 2025** wherein the following grounds of appeal were set forth:
 - a. **THAT the Learned Magistrate erred in law and in fact in dismissing the Plaintiff's suit;**
 - b. **THAT the Learned Magistrate erred in law and in fact in disregarding and or ignoring the Appellant's evidence and failed to address the various aspects of the case;**
 - c. **THAT the Learned Magistrate erred in law and in fact in failing to consider that the Respondents herein were also in contravention of Section 45 of the Law of Succession Act thereby allowing the Respondents to benefit from an alleged transgression for which the Appellant herein was punished;**
 - d. **THAT the Learned Magistrate was in error of law and fact in disregarding and or ignoring the Appellant's submissions; and**

- e. **THAT the Learned Magistrate's finding in dismissing the Appellant's suit was not based on any known or disclosed authorities.**
6. Based on these grounds, the Appellant prays that the Judgment of the trial Court delivered on the 17th of May, 2024 be vacated, set aside and or quashed, that this case be heard afresh before this Honourable Court, and in the alternative, this Honourable Court do re-assess the evidence and issue a Judgment thereon, and that the costs of this appeal be paid to the Appellant by the Respondents.
7. The court's directions were that the appeal be canvassed by way of written submissions which the court has had occasion to peruse and consider in writing this ruling.

Analysis of Submissions

8. The Appellant posits that the trial court's strict reliance on **Section 45 of the Law of Succession Act** resulted in a manifest injustice, as it failed to take into account that the purchase price was paid to the late Sasire Ene Mopel Kutata specifically to cater for her medical needs during a period of terminal illness. The Appellant argues that the Respondents' family was not only aware of this arrangement but actively participated in meetings, including a session before the Assistant County Commissioner, where the agreement was discussed.
9. To support the contention that a court of conscience should not permit a party to benefit from their own silence or perceived acquiescence, the Appellant relies on the case of **Gitau v. Kabau [2009] KLR**, which suggests that where a transaction is carried out in good faith and benefits the estate (such as paying medical bills), the court should be slow to invalidate it. Furthermore, the Appellant invokes **Article 159(2)(d) of the Constitution of Kenya** and **Section 13 of the Environment and Land Court Act**,

asserting that the court has a mandate to deliver substantive justice without undue regard to procedural technicalities. The Appellant cites the Supreme Court decision in **Nicholas Kiptoo Arap Korir Salat v. Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** to emphasize that procedural rules should be the handmaid of justice, not its mistress, and that the "intermeddling" label should not be used to facilitate the unjust enrichment of the Respondents who now seek to retain both the land and the benefits derived from the Appellant's payments.

10. In sharp contrast, the Respondents' submissions emphasize the primacy of statutory law and the mandatory nature of the Law of Succession. They argue that the trial court was bound to find the agreement null and void because, under **Section 45 of the Law of Succession Act**, no person can validly deal with the property of a deceased person prior to the issuance and confirmation of a grant of representation. The Respondents maintain that this provision is couched in mandatory terms and carries criminal sanctions, meaning the court cannot "sanitize" a transaction that is illegal *ab initio*. They place reliance on **Pricilla Kanyua v. Leunita Njeri [2011] eKLR** to argue that any person dealing with the property of a deceased person without authority is an intermeddler, and any contracts arising therefrom are unenforceable. Further, the Respondents cite **In Re Estate of Benson Njuguna Muiruri (Deceased) [2010] eKLR** to demonstrate that even where a party claims to have acted in good faith, the lack of a grant is a fatal jurisdictional and legal defect. Addressing the Appellant's plea for equity, the Respondents cite **Muguthu v. Muguthu & 2 others [2008] KLR**, which holds that equity cannot be used to override the express provisions of a statute. They argue that the Appellant failed to perform due diligence and that the doctrine of *caveat emptor* apply, as he chose to transact with a

widow who clearly had no letters of administration for the estate of **Oloibor Lukunya Mopel**, who died as far back as 1970. The Respondents also rely on **Kariuki v. Kariuki [2011] eKLR** to submit that the court should not assist a party who is part of an illegal transaction, asserting that allowing the appeal would set a dangerous precedent by encouraging the informal and illegal alienation of ancestral land before the conclusion of succession processes.

11. The Court is thus faced with the heavy task of determining whether the equitable exceptions raised by the Appellant can survive the strict statutory bar against intermeddling established by the trial court.

Issues for Determination

12. Upon a careful review of the Memorandum of Appeal, the record of proceedings from the trial court, and the rival submissions filed by the parties, this court finds that the following issues crystallize for determination:

- i. Whether the Learned Magistrate erred in law and fact by finding the Sale Agreement dated 31st March 2013 a nullity under Section 45 of the Law of Succession Act*
- ii. Whether the trial court erred in failing to properly weigh the Appellant's evidence and submissions regarding the payment of the purchase price and the administrative meetings held to settle the land dispute.*
- iii. Who shall bear the costs of this appeal?*

Analysis and Determination

- i. Whether the Learned Magistrate erred in law and fact by finding the Sale Agreement dated 31st March 2013 a nullity under Section 45 of the Law of Succession Act*

13. The legal framework governing the administration of estates in Kenya is strictly anchored in the Law of Succession Act (Cap 160). Section 45(1) provides that:

"Except so far as expressly authorized by this Act, or by any other written law or by a grant of representation under this Act, no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with any free property of a deceased person".

14. In the present case, the evidence establishes that the suit property originally belonged to Oloibor Lukunya Mopel, who died on 12th December 1970. The Appellant entered into a sale agreement for the purchase of 20 acres with Sasire Ene Mopel Kutata, one of the deceased's widows, on 31st March 2013. It is an uncontroverted fact that at the time of this transaction, the vendor had not obtained letters of administration or a confirmed grant of representation for the estate of the deceased.

15. Strictly speaking, the act of disposing of estate property without the requisite legal authority constitutes intermeddling as defined under the Act. The legal consequences of such actions have been clearly articulated by the courts.

16. In the case of *Simeon M'rimberia & another v Peter M'thuuri M'mboroki [2018] eKLR*, the court held that:

"any person who intermeddles with the estate of a deceased person without a grant of representation is a trespasser. He has no authority to deal with the estate and any transaction he enters into in respect of the estate is null and void."

17. Furthermore, as stated in *M'maitari v M'maitari (2000) 1 EA 131*,

"a person who takes possession of or disposes of or otherwise intermeddles with any free property of a deceased person without a grant of representation is guilty of a criminal offence and shall be liable for the loss or damage caused to the estate."

18. Consequently, since Sasire Ene Mopel Kutata lacked the legal capacity to subdivide or deal in the property of the deceased without a confirmed grant, the purported Sale Agreement was *void ab initio*. The trial court's finding that the agreement was irregular and could not be sanitized by the court is therefore consistent with established law and precedent. Thus, this Court determines this issue in the negative, finding no error in the Learned Magistrate's conclusion that the contract was a nullity.

ii. Whether the trial court erred in failing to properly weigh the Appellant's evidence and submissions regarding the payment of the purchase price and the administrative meetings held to settle the land dispute.

19. **Section 107(1) of the Evidence Act (Cap 80)**, provides that:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".

20. The Appellant (PW 1) testified that he paid a total purchase price of **Kshs 520,000/-** and that the transaction was known to the family members. However, the Respondents (DW 1 and DW 2) denied receiving any monies and maintained that their mother never received payment for the suit property.

21. Under **Section 108 of the Evidence Act**, *"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side"*. My

finding to this end is that the Appellant failed to prove on a balance of probabilities the claim that he paid monies to the Respondents.

22. Regarding the administrative meetings involving the Assistant County Commissioner, the Appellant argued that these processes and "common practice" in the group ranch should have been given more weight. However, as established in *Arthi Highway Developers Limited v Westlands Housing Co-operative Society Limited [2015] eKLR*,

"...the procedures for transfer of land are set out in the law and must be followed to the letter".

23. Administrative interventions cannot bypass the mandatory requirements of the **Law of Succession Act** or the **Land Act**. In *Palace Investment Ltd v Geoffrey Kariuki Mwangi & another [2015] eKLR*, the court emphasized that:

"The court has a duty to weigh the evidence as a whole... It must be weighed against other evidence and the circumstances of the case".

24. The trial court correctly observed that the lack of capacity by the vendor rendered any subsequent administrative "settlement" or evidence of payment irrelevant to the validity of the contract. Consequently, since the underlying agreement was *void ab initio* due to intermeddling under **Section 45 of the Law of Succession Act**, the Learned Magistrate did not err in finding that the Appellant's evidence could not sanitize a legally defective transaction. This Court therefore finds that the trial court properly evaluated the evidence and concludes that the Appellant failed to discharge the burden of proof required to establish an enforceable interest in the land.

iii. Who shall bear the costs of this appeal?

25. Regarding the final issue of the costs of this appeal, the Court is guided by **Section 27(1) of the Civil Procedure Act (Cap 21)**, which mandates that "*costs shall follow the event unless the court shall for good reason otherwise order.*" In the primary suit, the trial court exercised its discretion to order each party to bear their own costs. In the present appeal, however, the Appellant has been unsuccessful in demonstrating any reversible error in the lower court's judgment.

26. As articulated in **Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others [2014] eKLR.**

"The court's discretion is wide but must be exercised judicially and with due regard to the circumstances of each case."

27. This court finds that there are no exceptional circumstances to warrant a departure from the general rule that costs shall follow the event.

28. Accordingly, this court finds that the instant appeal lacks merit and proceeds to make the following orders:

a. The Appeal filed by **Edward Karrao Lesira** against the Judgment and Decree of the Subordinate Court in **Kajiado ELC E028 of 2023** is hereby dismissed in its entirety.

b. The costs of this appeal shall be borne by the **Appellant**.

It is so ordered.

Dated, Signed and Delivered Virtually this 30th Day of April, 2026.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Kores for the Appellant

Ms. Apolot for the Respondents

Court Assistant: Alex

M.D. MWANGI

JUDGE

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